

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:

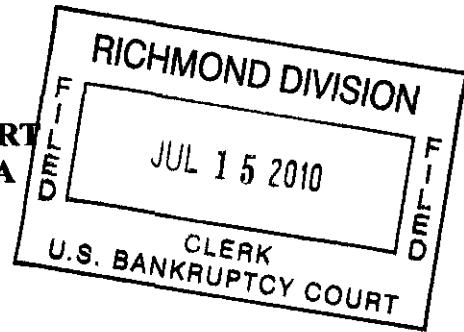
Chapter 11

CIRCUIT CITY STORES, INC.,  
et al.,

Case No.: 08-35653 (KRH)

Debtors.

Jointly Administered



**CLAIMANT JESSEE PEREZ'S RESPONSE TO DEBTORS' SEVENTY-NINTH  
OMNIBUS OBJECTION TO CLAIMS AND REQUEST FOR HEARING**

Claimant, Jessee Perez, as required by and pursuant to the procedures set forth in the "Notice of Debtors' Seventy-Ninth Omnibus Objection to Claims (Disallowance of Certain Legal Claims)," hereby files his response to Debtors' objection to his claim and requests a hearing in said matters as follows:

1. Claimant, Jessee Perez, is represented by the law firm of Bogin, Munns & Munns, P.A. regarding a personal injury claim against Debtors, proof of which has been filed with this Court (Claim Number 6008). The undersigned is an attorney with Bogin, Munns & Munns, P.A., and is licensed to practice law in the State of Florida. I am familiar with the facts of the claim, have personally conferred with Mr. Perez, and can certify that this Response is true and accurate, to the best of my knowledge, and is based upon information provided to me by the Claimant, Jessee Perez, and the contents of the file maintained by Bogin, Munns & Munns, P.A. with regard to Mr. Perez's claims.

2. The Claimant for whom this Response is being filed is Jessee Perez (Claim Number 6008). Mr. Perez's address is 100 Clairbourne Avenue, Satellite Beach, Florida 32737. Mr. Perez is represented by Bogin, Munns & Munns, P.A., 924 Garfield Street, Melbourne,

Florida 32935, whose telephone number is (321) 254-3939, whose fax number is (321) 254-3929, and whose email address is bbaker@boginmunns.com. Bogin, Munns & Munns, P.A. has the authority to reconcile, settle and / or otherwise resolve the Debtors' Objection on behalf of the Claimant, Jesse Perez. Therefore, any reply of the Debtor to this Response, and any other future papers served in these Bankruptcy proceedings should be served upon Bogin, Munns & Munns, P.A. at the address specified above (the "Notice Address").

3. Jesse Perez's claim arises from personal injuries he sustained due to the negligence of the Debtors. On August 23, 2007, Mr. Perez and his pregnant wife visited the Debtors' place of business located on New Haven Avenue, in Melbourne, Florida (Store Number 4201). Mr. Perez was on the premises lawfully, and a business invitee under Florida law. With the assistance and recommendations of a sales associate, they decided to purchase a large, multi-component surround sound home theater system, along with appropriate speaker mounts and other accessories. Another sales associate then attempted to precariously load these heavy items onto a conventional shopping cart for Mr. Perez to transport them to his vehicle. When the load began to shift as the employee made the transfer, Mr. Perez instinctively reached out to catch the falling object to protect his eight month pregnant wife from harm. In catching the heavy object, Mr. Perez immediately felt a sharp pain in his lower back. The sales associate that assisted Mr. Perez in picking out the system then came to Mr. Perez's assistance with a larger, more stable cart, specifically designed to transport such heavy loads in a safe manner. A copy of Mr. Perez's store receipt for the items and date set forth above is attached as **Exhibit "A."**

4. Because of his continuing back pain, Mr. Perez presented to Dr. Mark Pinsky, D.O., the day after the incident. Dr. Pinsky's medical records indicate that Mr. Perez reported "low back pain that started yesterday, he (patient) tried to catch a big box that was falling from

chest high." Pain was worsened by rising up from a seated position and any lifting efforts. There was low back pain and tightness, with tenderness, and paraspinal muscle spasm at the L3-5 level. The diagnosis was lumbago / low back pain. Dr. Pinsky recommended physical therapy by PT Professionals, and prescribed Flexeril and Darvocet. Following physical therapy, and after suffering an aggravation to his condition, Mr. Perez returned to Dr. Pinsky on October 23, 2007. Dr. Pinsky's office notes indicate that Mr. Perez had been experiencing continued back pain since the August 23, 2007 incident where he felt a sharp, shooting pain in his back while bending over. Dr. Pinsky observed mid back pain and increased tenderness, more so on the right, and paraspinal musculature spasms at T3-T8. A second course of physical therapy was recommended. Copies of Dr. Pinsky's office notes are attached as **Exhibit "B."**

5. As advised by Dr. Pinsky, Mr. Perez completed a second course of physical therapy. The diagnosis included marked tenderness to palpation in the erector spinae bilaterally, pronounced sensitivity in the area of L2, limited range of motion and hyper tonicity in erector spinae muscles on both sides of the lumbar spine. Mr. Perez completed the supervised, structured course of care. His discharge summary reflected limited range of motion, with moderate limitations in working and picking up his child, and a severe limitation in his recreational activities. Mr. Perez continues to suffer from reduced functioning and limitations in his activities of daily life. Copies of the physical therapy records are attached as **Exhibit "C."**

6. Mr. Perez also suffered a loss of income due to his injuries. During the period of his recovery, Mr. Perez and his family relocated. He had planned to make the move himself. However, because of his injuries, he was physically unable to lift, and he was forced to hire movers to perform the task at a cost of \$500.00. Also, Mr. Perez and his wife are co-owners of their own wedding consulting company ([www.floridabeachsideweddings.com](http://www.floridabeachsideweddings.com)). Mr. Perez

provides the “muscle” of the operation - transporting and setting up equipment and decorations. His injuries prevented him from performing these tasks, and, as a result, the business was forced to turn down at least two profitable weddings. The lost profits from these two weddings are conservatively estimated at \$3500.00. Mr. Perez also lost significant time from his job as a Brevard County Firefighter. In total, he missed 142 hours from work. His pay rate is \$11.34 per hour. Consequently, his wage loss claim is \$1,610.28 (142 hours @ \$11.32 = \$1,610.28). The total out of pocket special damages presently total \$5855.28 alone. Documents supporting the out of pocket medical expenses, moving expenses, lost business income, and lost wages are attached as composite **Exhibit “D.”**

7. With regard to the foregoing, Bogin, Munns & Munns, P.A., on behalf of Mr. Perez, sent a notice letter to Debtors advising of its representation of Mr. Perez for his personal injury claim. Debtors acknowledged the claim on October 18, 2007 (see attached **Exhibit “E”**). On Mr. Perez’s behalf, Bogin, Munns & Munns, P.A. submitted a demand to Debtors on December 27, 2007. After making an initial request for further information to which Mr. Perez responded, Debtors failed to respond to multiple phone calls and letters to Debtors. At no time did Debtors deny liability for the incident described above.

8. An affidavit of Claimant verifying the facts of the incident in question, and the resulting damages detailed above, is attached as **Exhibit “F.”**

9. The allegations of negligence against Debtors, arising from the subject incident, are as follows:

- a. Negligently creating a hazardous condition, to wit - the improper loading of a conventional shopping cart with large, heavy items in close proximity

to Claimant - when Debtors knew, or through the exercise of reasonable care should have known, that such condition was unreasonably dangerous;

- b. Negligently failing to correct or adequately correct the unreasonably dangerous condition on Debtor's premises, when such condition was known to Debtors; and
- c. Negligently failing to warn of such dangerous condition.

10. The amount set forth in the original proof of claim (\$50,000) is a conservative estimate based on the foregoing facts and legal bases, as well as undersigned counsel's personal experience with, and knowledge of, typical jury verdicts in the governing jurisdiction involving similar circumstances.

11. Based upon the foregoing, the Claimant, Jessee Perez has a valid, supported, and meritorious claim against Debtors.

WHEREFORE, Claimant, Jessee Perez, by and through Bogin, Munns & Munns, P.A., his attorneys, respectfully requests that this Court enter an Order overruling the Debtors Seventy-Ninth Omnibus Objection to Claims as said objection relates to the claim of Jessee Perez (Claim Number 6008) and requests a hearing on said matters.

Dated: 7/14/10



Bogin, Munns & Munns, P.A.

By: Barry K. Baker, Esq.

Fla. Bar. No.: 164097

924 Garfield Street

Melbourne, Florida 32935

(321) 254-3939 (voice)

(321) 254-3929 (facsimile)

[BBaker@boginmunns.com](mailto:BBaker@boginmunns.com)

*Attorneys for Claimant Jessee Perez*

**CERTIFICATE OF SERVICE**

I HERBY CERTIFY that on July 14<sup>th</sup>, 2010, the original of the foregoing was sent to the Clerk of Court via FedEx overnight delivery, and that true and correct copies were sent via FedEx overnight delivery to:

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP  
Gregg M. Galardi, Esq.  
Ian S. Fredericks, Esq.  
One Rodney Square, 7<sup>th</sup> Floor  
Wilmington, DE 19801

-and-

MCGUIRE WOODS, LLP  
Dion W. Hayes, Esq.  
Douglas M. Foley, Esq.  
901 E. Cary Street  
Richmond, VA 23219

-and-

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP  
Chris L. Dickerson, Esq.  
155 North Wacker Drive  
Chicago, Illinois 60606



Bogin, Munns & Munns, P.A.  
By: Barry K. Baker, Esq.  
Fla. Bar. No.: 164097  
924 Garfield Street  
Melbourne, Florida 32935  
(321) 254-3939 (voice)  
(321) 254-3929 (facsimile)  
[BBaker@boginmunns.com](mailto:BBaker@boginmunns.com)  
*Attorneys for Claimant Jesse Perez*

# **EXHIBIT “A”**



Circuit City Stores Inc.

Store 4201  
1700 N NEW HAVEN ROAD  
NEW BRUNSWICK, NJ 08814-3746  
(321) 724-1894

13:24:12 07/15/07

Sent to: Iris Perez 07/15/07  
JESSEE PEREZ

Asst

**CUSTOMER COPY**

07/15/07

Salesperson	Register	Cashier
K. MARK	318774	
ITEMS PURCHASED		
1 SL 1 HCG HDMI300TH	VIDEO CABLES	39.99
2 SL 1 OMS PB2B-PK	FURNITURE/HOIST	19.99
3 SL 1 HCG XPM510	AUDIO CABLES INC	39.99
4 SL 1 OMS PB2B-PK	FURNITURE/HOIST	19.99
5 SL 1 ONK HISR900	HUB	399.99
Total Taxable	\$ 519.95	
Sales Tax	\$ 31.20	
<b>TOTAL PURCHASE</b>	<b>\$ 551.15</b>	
HCG 057402	\$ 551.15	
<b>BALANCE</b>	<b>\$ 0.00</b>	

For manufacturer contact information, please refer to your owner's manual or visit [circuitcity.com](http://circuitcity.com).

You may be eligible to earn Circuit City Reward Points! Apply for a Circuit City Rewards Credit Card today. See a store associate for details.

Shop with us online at [circuitcity.com](http://circuitcity.com).

[Redacted]

IN-HOME INSTALLS ARE CHARGED A SHOP FEE FOR MISF.

PARTS

FOR IN-HOME INSTALLATION AND REPAIR  
SERVICE OR CONSUMER REPLACEABLE  
PARTS CALL: (888) 333-2333

Get a Chance to Win One of Five \$1,000 Gift Cards!

Take Circuit City's "Customer First" Survey

Queremos saber su opinion

Contestate nuestra encuesta por Internet

We're anxious to hear about your shopping experience! Get a chance to win one of five \$1,000 Circuit City Gift Cards by taking a few minutes to answer a short survey at:

**[www.circuitcity.com/SURVEY](http://www.circuitcity.com/SURVEY)**

You will need the following customer code  
to enter on-line:

**UJS MLNH 3GY4**

Get a Chance to Win One of Five \$1,000 Gift Cards!

Take Circuit City's "Customer First" Survey

Queremos saber su opinion

Conteste nuestra encuesta por Internet

We'd like to hear about your shopping experience.  
Get a chance to win one of five \$1,000 Circuit City Gift  
Cards by taking a few minutes to answer a short survey at:

**[www.circuitcity.com/survey](http://www.circuitcity.com/survey)**

You will need the following customer code  
to enter on-line:

**UJS MLNH 3GY4**

No purchase necessary.

See Circuit City stores for details.

Void where prohibited.

Thanks for making your purchase at Circuit City!

---

**Circuit City Stores, Inc.**

Store 4201  
1700 W NEW HAVEN ROAD  
MELBOURNE, FL 32904-3705  
(321) 724-1694

13:24:12 08/23/07

---

**CUSTOMER COPY**

Trans #: 420102556739

Merchant#: 090311894

Register#: 30 Cashier: 318774

House Desc: 011

Services / Home Office

Type Cardholder:

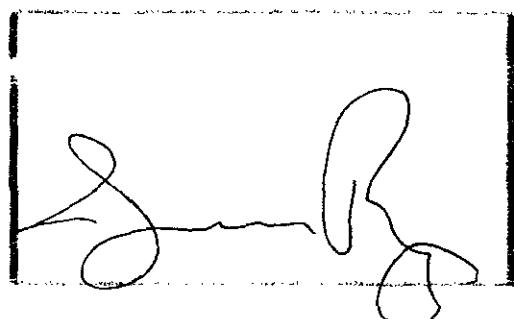
HCG PEREZ JESSE

057402 Sale \$ 861.15

XXXXXX

The cardholder agrees to the credit card amount shown  
hereon and agrees to perform the obligations set forth  
in the cardholder's agreement with the issuer.

Signature:



# **EXHIBIT “B”**

Pinsky Family and Sports Medicine Center

Patients Name: Jesse Perry

Date: 8/24/07

S Subjective and Interim History:

Allergies: NKA

C/C Low back pain that started yesterday, he tried to catch a big box that was falling from chest high.

Slowly progressive  
isolated  
Gradually -  
 Low back pain

PW/Site  
PW/lift  
OR Valsalva  
1<sup>st</sup> event

Review of Systems (circle positive findings)

General: wt loss, fatigue, fever, pain, fullness
Ears: hearing loss, tinnitus, pain, fullness
Eyes: vision loss, pain
Nose: congestion, discharge
Mouth/Throat: tooth Pain, PND, sores
Neck: glands swollen, dysphagia, odynophagia
CV: angina, int claudication, temp &/or color changes in hands or feet
Resp: SOA, wheezing, cough, sputum, orthopenia, PND
GI: Nausea, vomiting, constipation, diarrhea
GU: urgency, frequency, dysuria, incontinence
MS: arthralgias, muscle pain, joint stiffness
Neuro: numbness, tingling
Skin: erythema, rash, pruritus
Hematologic: anemia, easy bleeding

O Physical Exam: BP 110/80 P 72 RESP 16 T 98.6 WT 193 HTS 5'9" AGE 28

LBP: very tight

tender in paraspinal spasm R/L

L3-5

Rm: flex: 30°  
ext: 15°

lat flex = 20° R/L

rot = tight -

focal neurodeficits

A Assessment:

LBP → H/S/T

Flexeril 10 PO 1ID  
A60

P Plan:

Follow-up: \_\_\_ days \_\_\_ weeks \_\_\_ months  
if not needed \_\_\_ PRN

Mark F. Pinsky DO

Pinsky Family and Sports Medicine Center

Patients Name: Jesse Reby Date: 10/23/07  
 S Subjective and Interim History:

Allergies: NKDA

Ck: pt reinjured LB yesterday while bending over. Would like to restart PT - maybe.  
 1 week pt has + dry cough ↑ cough in PM + PND Ø sore throat  
 Went up back → shooting pain feels sore today.

Review of Systems (circle positive findings)

General: wt loss, fatigue, fever, pain, fullness
Ears: hearing loss, tinnitus, pain, fullness
Eyes: vision loss, pain
Nose: congestion, discharge
Mouth/Throat: tooth Pain, PND, sores
Neck: glands swollen, dysphagia, odynophagia
CV: angina, int claudication, temp &/or color changes in hands or feet
Resp: SOA, wheezing, cough, sputum, orthopnea, PND
GI: Nausea, vomiting, constipation, diarrhea
GU: urgency, frequency, dysuria, incontinence
MS: arthralgias, muscle pain, joint stiffness
Neuro: numbness, tingling
Skin: erythema, rash, pruritus
Hematologic: anemia, easy bleeding

O Physical Exam: BP 122/78 P 68 RESP \_\_\_\_\_ T \_\_\_\_\_ WT 190 HT \_\_\_\_\_ AGE 28

	Normal	Abnormal
Appearance	✓	
HR/ENT	✓	
Neck/Chest	✓	
Breasts		
Lungs	✓	
Heart	✓	
Abdomen	✓	
Extremities	✓	
Neurologic		
Lymphatics		
Skin		

(+) d. erythema

Mid back: (+) tender, (+) paraspinal  
 span T3-T8  
 w/o any other symptoms  
 NL R/R

A Assessment: ① Urinary → + PND (considering ABX)  
 ② Mid back pain - if persists  
 • exercise given (HST)

P Plan:

Follow-up: \_\_\_ days \_\_\_ weeks \_\_\_ months  
 if not needed PRN

Mark F. Pinsky D.O.

# **EXHIBIT “C”**



Physical Therapy Professionals, LLC  
8045 Spyglass Hill Road, Suite 103  
Melbourne, FL 32940  
Phone: 321-757-5515  
Fax: 321-757-5514

## Initial Evaluation

Patient Name: Jessee A Perez  
Referring Physician: Mark F Pinsky DO  
Diagnosis: 724.2 Lumbago, low back pain.

Report Generation Date: 9/18/2007  
9/18/2007  
86  
5/14/1979 (28 years old)

### Subjective

#### Current Condition

##### Details

Chief Complaint:	Pt reports that he feels pain when he sits. He feels restless. He reports a dull, consistent pain. He works for the fire department. He has been taking some time off to take care of himself, but he is not taking off full time. The pain is across his back on both sides. He reports that he does not get any pain down his legs. He does not feel any weakness in his legs. He does not report any blood in the stool or urine.
Specific Injury:	pt reports that a few weeks ago, was moving an entertainment center on a cart. The entertainment center was about to fall onto his wife, so he hugged the door to prevent it from hitting her. He felt a strain in his back and he has been hurting ever since.

#### Pain History

##### Pain Area

Area	Current	Best	Worst
L-Spine	4	4	4

#### Functional Status

Functional Activity	Status	Level
working without pain.		Current
Recreational		Current
Exercise		Current
Sitting		Current
picking up his children.		Current

#### Medical History

Pt reports a hx of a broken R leg when he was four years ago. Other than that, he has no history of injury or surgery to his lower back or legs. Pt reports that he is taking darvocet and flexoril. He does not take it at work or during the day.

### Objective

#### Observation

Pt has no gait abnormalities.

#### LSpine

##### Active Range Of Motion

Motion	Range Of Motion
Flexion	80 Percent
Extension	50 Percent
Sidebending Right	70 Percent
Sidebending Left	70 Percent

8045 Spyglass Hill Road, Suite 103 Melbourne, FL 32940

Initial Evaluation - Jessee A Perez



Physical Therapy Professionals, LLC  
8045 Spyglass Hill Road, Suite 103  
Melbourne, FL 32940  
Phone: 321-757-5515  
Fax: 321-757-5514

Rotation Right	80 Percent
Rotation Left	80 Percent

#### Passive Range Of Motion

Measurement	Range Of Motion
Flexion	100 Percent
Extension	100 Percent
Sidebending Right	100 Percent
Sidebending Left	100 Percent
Rotation Right	100 Percent
Rotation Left	100 Percent

#### Muscle Testing

Measurement	Right Strength	Right Flexibility	Left Strength	Left Flexibility
Tibialis Anterior	5/5		5/5	
Hip Flexors	4/5		4/5	
Gastrocnemius	5/5		5/5	
Hamstring	4/5	severe restriction	4/5	severe restriction
Quadriceps	5/5		5/5	
Rectus Abdominis	5/5		5/5	

#### Special Tests

Special Test	Right	Left
Slump Test (Lumbar)	Negative	Negative
Straight Leg Raise	hamstring tightness	hamstring tightness
Quadrant Test (L-Spine)	Negative	Negative
Neurotension Test	Negative	Negative

#### Joint Mobility

Joint	Force Direction	Grade
L5/S1	rotation	II

#### Reflexes

Reflex	Right	Left
L3 - Patellar	diminished	2+
S1 - Achilles	2+	2+

#### Palpation

pt has marked tenderness to palpation in the erector spinae bilaterally. The most sensitive area is in the area of L2. The L side seems to be slightly more sensitive than the R.

#### Assessment

##### Descriptions

Evaluation has determined decrease in functional status for this patient.  
Evaluation has found subjective and objective deficits that can be addressed by physical therapy intervention.  
Subjective and objective measures are addressed by goals in the plan of care.  
Patient / family are involved in the development of these goals.  
Patient / family are educated about current injury and treatment.

8045 Spyglass Hill Road, Suite 103 Melbourne, FL 32940

Initial Evaluation - Jessee A Perez



Physical Therapy Professionals, LLC  
8045 Spyglass Hill Road, Suite 103  
Melbourne, FL 32940  
Phone: 321-757-5515  
Fax: 321-757-5514

pt reports today with bilateral lumbar pain. Upon examination, he has marked tenderness and hypertonicity in the erector spinae muscles on both sides of the lumbar spine. He has limited AROM due to pain. Hamstrings are very restricted. Lumbar joint mobility is restricted, but this is likely due to sustained muscle spasm. There is no evidence of radiculopathy. LE strength is good except for a few motions which increase his pain. Slump test and SLR were negative for radiculopathy.

Potential to reach goals: Good

#### Problem List

##### Problems

Pain limits functional activities  
Decreased ROM preventing full functional activity  
Decreased strength limiting functional activities  
decreased work capacity.

#### Plan

##### Goals

Length	Status	Goal
Short Term	Not Met	1. Independent with home exercise program in 3 weeks.
Long Term	Not Met	2. Patient able to participate in full recreational activities in 6 weeks.
Long Term	Not Met	2a. Increase ROM to WNL.
Short Term	Not Met	2b. Increase strength to WNL.
Short Term	Not Met	3. Patient to report decreased pain during functional activities in 6 weeks.
Short Term	Not Met	3a. Patient to report decreased pain measured by visual analog scale.
Long Term	Not Met	pt will tolerate working a full shift at the firestation and will report no increase in symptoms.
Short Term	Not Met	pt will tolerate static sitting for 10 minutes and will report no increase in symptoms.

#### Treatment Plan

Recommend Physical Therapy for 3 time(s) a week for 4 week(s), with treatment to consist of: Body Mechanic Training (97110) - Proper positioning and lifting strategies, Core Stabilization (97110) - Increase strength and function of spinal stabilization muscles, Flexibility (97110) - active and passive patient stretching, Neuromuscular Re-ed - 97112: Improve neurologic control of muscle function, ROM (97110) - Passive or active activities to increase joint range of motion, Therapeutic Exercise - 97110: Improve muscle strength, ROM, flexibility, and muscle function, Cryotherapy- 97010: Application of cold to decrease local swelling and decrease pain, Heat- 97010: Application of heat to increase local circulation and decrease pain, IFC E-Stim- 97014: Application of E-Stim to modulate pain , Ultrasound- 97035: increase local circulation, improve tissue healing time, and modulate pain, Manual Stretching- 97140: passive or active stretching to improve muscle length and function, Soft Tissue Mobs- 97140: increase ROM tissue length, joint mechanics, and modulate pain, and Spine Mobilization- 97140: increase ROM, improve joint mechanics, and modulate pain.

#### Initial Treatment

- Patient Education - Initial Evaluation Pt. understood injury and its management.
- Modality - Cryotherapy 10 Minutes
- Manual - Soft Tissue Massage 10 Minutes
- L-Spine - Lateral Trunk Rotation 2 sets of 10
- Marching in Place 3 x 10
- alternating LE lift 3 x 10
- Supine gym ball roll outs 3 x 10
- Bridging over gym ball 3 x 10
- Bridging 3 x 10

8045 Spyglass Hill Road, Suite 103 Melbourne, FL 32940

Initial Evaluation - Jessee A Perez



Physical Therapy Professionals, LLC  
8045 Spyglass Hill Road, Suite 103  
Melbourne, FL 32940  
Phone: 321-757-5515  
Fax: 321-757-5514

---

Daryl C Jacobs II DPT, MTC, ATC  
License #: PT 19737

(Document electronically signed by TheraOffice Documentation)  
9/18/2007

8045 Spyglass Hill Road, Suite 103 Melbourne, FL 32940

Initial Evaluation - Jesse A Perez



Physical Therapy Professionals, LLC  
8045 Spyglass Hill Road, Suite 103  
Melbourne, FL 32940  
Phone: 321-757-5515  
Fax: 321-757-5514

## Re-Evaluation Note

Report Generation Date: 10/24/2007

Patient Name: Jessee A Perez  
Referring Physician: Mark F Pinsky DO  
Diagnosis: 724.2 Lumbago, low back pain.

Patient ID: 86  
Date of Birth: 5/14/1979 (28 years old)

### Subjective

#### Pain History

##### Pain Area

9/18/2007

Area	Current	Best	Worst
L-Spine	4	4	4

10/24/2007

Area	Current	Best	Worst
L-Spine	4	4	6

#### Pain Description

#### Functional Status

9/18/2007

10/24/2007

Functional Activity	Level	Status	Level
working without pain.	Current	Moderate Limitation	Current
Recreational Exercise	Current	Severe Limitation	Current
Sitting	Current	Mild Limitation	Current
picking up his children.	Current	Moderate Limitation	Current

### Objective

#### Observation

pt has no gait abnormalities.

#### LSpine

##### Active Range Of Motion - Range of Motion

9/18/2007

10/24/2007

Motion	Range Of Motion	Range Of Motion
Flexion	80 Percent	90 Percent
Extension	50 Percent	65 Percent
Sidebending Right	70 Percent	80 Percent
Sidebending Left	70 Percent	80 Percent
Rotation Right	80 Percent	70 Percent
Rotation Left	80 Percent	70 Percent

##### Passive Range Of Motion

9/18/2007

Measurement	Range Of Motion	Range Of Motion
-------------	-----------------	-----------------

8045 Spyglass Hill Road, Suite 103 Melbourne, FL 32940

Progress Note - Jessee Perez



**Physical Therapy Professionals, LLC**  
**8045 Spyglass Hill Road, Suite 103**  
**Melbourne, FL 32940**  
**Phone: 321-757-5515**  
**Fax: 321-757-5514**

Flexion	100 Percent	100 Percent
Extension	100 Percent	100 Percent
Sidebending Right	100 Percent	100 Percent
Sidebending Left	100 Percent	100 Percent
Rotation Right	100 Percent	100 Percent
Rotation Left	100 Percent	100 Percent

#### Muscle Testing

	<b>9/18/2007</b>	<b>10/24/2007</b>		
<b>Measurement</b>	<b>Right Strength</b>	<b>Left Strength</b>	<b>Right Strength</b>	<b>Left Strength</b>
Tibialis Anterior	5/5	5/5	5/5	5/5
Hip Flexors	4/5	4/5	4+/5	4+/5
Gastrocnemius	5/5	5/5	5/5	5/5
Hamstring	4/5	4/5	4+/5	4+/5
Quadriceps	5/5	5/5	5/5	5/5
Rectus Abdominis	5/5	5/5	5/5	5/5

#### Special Tests

	<b>9/18/2007</b>	<b>10/24/2007</b>		
<b>Special Test</b>	<b>Right</b>	<b>Left</b>	<b>Right</b>	<b>Left</b>
Slump Test (Lumbar)	Negative	Negative	Negative	Negative
Straight Leg Raise	hamstring tightness	hamstring tightness	hamstring tightness	hamstring tightness
Quadrant Test (L-Spine)	Negative	Negative	Negative	Negative
Neurotension Test	Negative	Negative	Negative	Negative

#### Joint Mobility

	<b>9/18/2007</b>			
<b>Joint</b>	<b>Force Direction</b>	<b>Grade</b>	<b>End-Feel</b>	<b>Symptoms</b>
LS/S1	rotation	II		

	<b>10/24/2007</b>			
<b>Joint</b>	<b>Force Direction</b>	<b>Grade</b>	<b>End-Feel</b>	<b>Symptoms</b>
LS/S1	rotation	III		

#### Reflexes

<b>Reflex</b>	<b>Right</b>	<b>Left</b>
L3 - Patellar	diminished	2+
S1 - Achilles	2+	2+

#### Palpation

pt has moderate tenderness to palpation in the erector spinae bilaterally. The quadratus lumborum is also tender, R>L.

#### Assessment

##### Descriptions

Evaluation has determined decrease in functional status for this patient.

Evaluation has found subjective and objective deficits that can be addressed by physical therapy intervention.

Subjective and objective measures are addressed by goals in the plan of care.

Patient was involved in the development of these goals.

Patient was educated about current injury and treatment.



Physical Therapy Professionals, LLC  
8045 Spyglass Hill Road, Suite 103  
Melbourne, FL 32940  
Phone: 321-757-5515  
Fax: 321-757-5514

pt reports today with increased pain and pt reports today following a recent exacerbation of his symptoms. His presentation is exactly the same as when he was here previously. He has marked spasm in the erector spinae and in the quadratus lumborum. His ROM has regressed a little due to the recent flare up. Goals will now be directed towards decreasing pain and spasm. Potential for improvement with PT intervention is good. Goals will also be directed towards increasing lumbar strength to the point that his symptoms do not return.

#### Problem List

##### Problems

Pain limits functional activities

Decreased ROM preventing full functional activity

Decreased strength limiting functional activities

decreased work capacity.

#### Plan

##### Goals

Length	Status	Goal
Short Term	Met	1. Independent with home exercise program in 3 weeks.
Long Term	Not Met	2. Patient able to participate in full recreational activities in 6 weeks.
Long Term	Not Met	2a. Increase ROM to WNL.
Short Term	Not Met	2b. Increase strength to WNL.
Short Term	Not Met	3. Patient to report decreased pain during functional activities in 6 weeks.
Short Term	Not Met	3a. Patient to report decreased pain measured by visual analog scale.
Long Term	Not Met	pt will tolerate working a full shift at the firestation and will report no increase in symptoms.
Short Term	Not Met	pt will tolerate static sitting for 10 minutes and will report no increase in symptoms.

##### Treatment Plan

Recommend Physical Therapy for 3 time(s) a week for 4 week(s), with treatment to consist of: Body Mechanic Training (97110) - Proper positioning and lifting strategies, Core Stabilization (97110) - Increase strength and function of spinal stabilization muscles, Flexibility (97110) - active and passive patient stretching, Neuromuscular Re-ed - 97112: Improve neurologic control of muscle function, ROM (97110) - Passive or active activities to increase joint range of motion, Therapeutic Exercise - 97110: Improve muscle strength, ROM, flexibility, and muscle function, Cryotherapy- 97010: Application of cold to decrease local swelling and decrease pain, Heat- 97010: Application of heat to increase local circulation and decrease pain, IFC E-Stim- 97014: Application of E-Stim to modulate pain , Ultrasound- 97035: increase local circulation, improve tissue healing time, and modulate pain, Manual Stretching- 97140: passive or active stretching to improve muscle length and function, Soft Tissue Mobs- 97140: increase ROM tissue length, joint mechanics, and modulate pain, and Spine Mobilization- 97140: increase ROM, improve joint mechanics, and modulate pain.

Daryl C Jacobs II DPT, MTC, ATC  
License #: PT 19737

(Document electronically signed by TheraOffice Documentation)  
10/24/2007

I have no revisions to this plan of care  
 Revise plan of care as follows

Prognosis:  Excellent  Good  Fair  Poor

8045 Spyglass Hill Road, Suite 103 Melbourne, FL 32940

Progress Note - Jesse Perez



Physical Therapy Professionals, LLC  
8045 Spyglass Hill Road, Suite 103  
Melbourne, FL 32940  
Phone: 321-757-5515  
Fax: 321-757-5514

Discharge Patient

Continue \_\_\_\_\_ times per \_\_\_\_\_ for \_\_\_\_\_ weeks / months

Physician Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
*In signing this document, physician certifies that prescribed rehabilitation is a medical necessity.*



Physical Therapy Professionals, LLC  
8045 Spyglass Hill Road, Suite 103  
Melbourne, FL 32940  
Phone: 321-757-5515  
Fax: 321-757-5514

## Discharge Note

Report Generation Date: 12/1/2007

Patient Name: Jesse A Perez  
Referring Physician: Mark F Pinsky DO  
Diagnosis: 724.2 Lumbago, low back pain.

Patient ID: 86  
Date of Birth: 5/14/1979 (28 years old)

### Subjective

#### Pain History

##### Pain Area

10/24/2007

Area	Current	Best	Worst
L-Spine	4	4	6

12/1/2007

Area	Current	Best	Worst
L-Spine	2	2	4

#### Pain Description

#### Functional Status

10/24/2007

12/1/2007

Functional Activity	Status	Level	Level
working without pain.	Moderate Limitation	Current	Current
Recreational Exercise	Severe Limitation	Current	Current
Sitting	Mild Limitation	Current	Current
picking up his children.	Moderate Limitation	Current	Current

### Objective

#### Observation

pt has no gait abnormalities.

#### Spine

##### Active Range Of Motion - Range of Motion

10/24/2007

12/1/2007

Motion	Range Of Motion	Range Of Motion
Flexion	90 Percent	90 Percent
Extension	65 Percent	75 Percent
Sidebending Right	80 Percent	90 Percent
Sidebending Left	80 Percent	90 Percent
Rotation Right	70 Percent	90 Percent
Rotation Left	70 Percent	90 Percent

#### Muscle Testing

10/24/2007

12/1/2007

Measurement	Right Strength	Left Strength	Right Strength	Left Strength
Tibialis Anterior	5/5	5/5	5/5	5/5

8045 Spyglass Hill Road, Suite 103 Melbourne, FL 32940

Discharge Note - Jesse Perez



Physical Therapy Professionals, LLC  
8045 Spyglass Hill Road, Suite 103  
Melbourne, FL 32940  
Phone: 321-757-5515  
Fax: 321-757-5514

Hip Flexors	4+/5	4+/5	5-/5	4/5
Gastrocnemius	5/5	5/5	5/5	5/5
Hamstring	4+/5	4+/5	5-/5	4/5
Quadriceps	5/5	5/5	5/5	5/5
Rectus Abdominis	5/5	5/5	5/5	5/5

#### Special Tests

	10/24/2007		12/1/2007	
Special Test	Right	Left	Right	Left
Slump Test (Lumbar)	Negative	Negative	Negative	Negative
Straight Leg Raise	hamstring tightness	hamstring tightness	hamstring tightness	hamstring tightness
Quadrant Test (L-Spine)	Negative	Negative	Negative	Negative
Neurotension Test	Negative	Negative	Negative	Negative

#### Joint Mobility

10/24/2007				
Joint	Force Direction	Grade	End-Feel	Symptoms
L5/S1	rotation	III		

12/1/2007				
Joint	Force Direction	Grade	End-Feel	Symptoms
L5/S1	rotation	III		

#### Reflexes

Reflex	Right	Left
L3 - Patellar	diminished	2+
S1 - Achilles	2+	2+

#### Palpation

pt has very mild tenderness to palpation in the erector spinae bilaterally.

#### Assessment

##### Descriptions

Evaluation has determined decrease in functional status for this patient.  
Evaluation has found subjective and objective deficits that can be addressed by physical therapy intervention.  
Subjective and objective measures are addressed by goals in the plan of care.  
Patient was involved in the development of these goals.  
Patient was educated about current injury and treatment.  
pt has made good progress with PT intervention. He continues to have some pain with over exertion. Pain levels are much lower and pt is independent with his HEP.

##### Problem List

###### Problems

Pain limits functional activities  
Decreased ROM preventing full functional activity  
Decreased strength limiting functional activities  
decreased work capacity

#### Plan

8045 Spyglass Hill Road, Suite 103 Melbourne, FL 32940

Discharge Note - Jesse Perez



Physical Therapy Professionals, LLC  
8045 Spyglass Hill Road, Suite 103  
Melbourne, FL 32940  
Phone: 321-757-5515  
Fax: 321-757-5514

**Goals**

Length	Status	Goal
Short Term	Met	1. Independent with home exercise program in 3 weeks.
Long Term	Not Met	2. Patient able to participate in full recreational activities in 6 weeks.
Long Term	Not Met	2a. Increase ROM to WNL.
Short Term	Met	2b. Increase strength to WNL.
Short Term	Met	3. Patient to report decreased pain during functional activities in 6 weeks.
Short Term	Met	3a. Patient to report decreased pain measured by visual analog scale.
Long Term	Not Met	pt will tolerate working a full shift at the firestation and will report no increase in symptoms.
Short Term	Met	pt will tolerate static sitting for 10 minutes and will report no increase in symptoms.

**Treatment Plan**

Discharge to independent HEP.

---

Daryl C Jacobs II DPT, MTC, ATC  
License #: PT 19737

(Document electronically signed by TheraOffice Documentation)  
12/1/2007

# **EXHIBIT “D”**

# PT PROFESSIONALS

PHYSICAL THERAPY PROFESSIONALS

Physical Therapy Professionals  
8045 Spyglass Hill Road, Suite 103  
Melbourne, FL 32940  
(321) 757-5515

Patient: Jessee A Perez

Day	Date	Start Time	End Time	Status	Resource	Address
Tuesday	09/25/2007	8:45 am	9:30 am	To Be Seen	Daryl Jacobs, DPT, MTC, ATC	8045 Spyglass Hill Road, Suite 103

Apt #3

✓ Also - (2) Prescriptions

\$10 per = \$20 (Can't find  
receipts)

Both  
by  
pinkys (① muscle relaxers  
② Pain Med - ~~baseball~~  
We still has bottles - will  
give you.